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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/531,155

09/26/2005

Peter Lawrence Bailey

J3692(C)

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EXAMINER

YU, GINA C

ART UNIT

PAPER NUMBER

1617

MAIL DATE

DELIVERY MODE

02/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/531,155	Applicant(s) BAILEY ET AL.	
	Examiner GINA C. YU	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/19/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,7,8,10,12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 8, 10, 12, 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 19, 2007 has been entered.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4, 7, 8, 10, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoppe et al. (US 2003/0180277 A1) in view of Hersh (US 6011067) and Bryce-Smith (US 6288115 B1).

Hoppe discusses anti-dandruff compositions for the scalp. The reference teaches adding a conjugated fatty acid ("CLA"), particularly conjugated linoleic acid, in the weight amount of 0.00001-5 %, to promote the energy metabolism of the hair root. See [0054] – [0063]. With respect to claim 8, it is obvious that the components should exist in separate containers. The reference further teaches that all geometric isomer forms and position isomer forms as well as the mixtures of such compounds are useful for the invention. See [0061]. Table 1 shows CLA composition which comprises 34.6 % of 9 cis, 11 trans/ 9 trans 11 cis and 35.9 % of 10 trans 12 cis isomers. See instant

claim 13. Example 3 shows a shampoo comprising the CLA in Table 1, a gelling agent, and pearlescent agents, which renders the composition opaque. See instant claim 12. Examples 4-9 also mention clear shampoos, thereby suggesting formulating clear compositions with CLA.

The prior art employs bioquinone as the anti-dandruff agent and does not disclose the anti-dandruff agents of the instant claims.

Hersh teaches that zinc pyrithione has been used for treatment of dandruff, seborrheic dermatitis, flakes and other skin maladies in the form of shampoo, lotion, and cream. See col. 10, line 13 – col. 11, line 8. Example 3 illustrates a shampoo comprising 1 % of zinc pyrithione.

Bryce-Smith teaches that zinc salt of conjugated linoleic acid has surprisingly great efficacy over conjugated linoleic acid alone, which may act as an irritant. See col. 1, lines 55 – 61.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the composition of Hoppe by substituting bioquinone with or incorporating, zinc pyrithione, as motivated by Hersh, because both components are functionally equivalent anti-dandruff agents well known in the art. The skilled artisan would have had a reasonable expectation of successfully producing an anti-dandruff composition with similar efficacy. Hoppe teaches combining the CLA formulation with an anti-dandruff agent, Hersh teaches zinc pyrithione which is dissolved and dissociates in aqueous compositions, and salt formation of an acid in neutral pH is well known to an ordinary skill in chemical art; therefore, the skilled artisan would have had a reasonable

expectation of successfully producing a scalp treatment composition comprising zinc salt of CLA by adjusting the pH of the composition of the prior arts. Since Bryce-Smith suggests that zinc salt of CLA overcomes the irritating effects of CLA, the skilled artisan would also have had motivation to make an anti-dandruff composition with reduced irritation.

Response to Arguments

Applicant's arguments filed on June 27, 2007 have been fully considered, but they are moot in view of the new grounds of rejection.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/
Primary Examiner, Art Unit 1617